

DEED OF GUARANTEE & INDEMNITY

Between

_____ (Contractor)

and

Owner	
Owner Name	_____ (Owner)

and

Guarantors			
Full Name	_____		
Address	_____	Drivers Licence No. (Copy required)	_____
DOB	/ /	Mobile	_____
Full Name	_____		
Address	_____	Drivers Licence No. (Copy required)	_____
DOB	/ /	Mobile	_____
Full Name	_____		
Address	_____	Drivers Licence No. (Copy required)	_____
DOB	/ /	Mobile	_____

(the Guarantors)

The Guarantors hereby covenant and undertake and if more than one, jointly and severally, as follows:

1. Personal Guarantee

- 1.1. In consideration of the Builder agreeing to enter into the Agreement at the request of the Guarantors, the Guarantors jointly and severally, personally and unconditionally guarantee the:
 - (a) punctual payment of all monies owed by the Owner to the Contractor pursuant to the Agreement; and
 - (b) performance and observance by the Owner of all of the terms of the Agreement.
- 1.2. No extension of time or other indulgence granted to the Owner by the Contractor or to any of the Guarantors will operate to affect or modify any of the Guarantors obligations or covenants under this guarantee and indemnity (**Guarantee**).
- 1.3. This Guarantee is a continuing guarantee for the whole of the Owner's indebtedness or liability in respect of the Goods provided to the Owner by the Contractor pursuant to the Agreement.

2. Indemnity and liability

- 2.1. The Guarantors covenant and agree to indemnify and keep indemnified the Contractor from and against all and any loss, damage, cost, charge or expense or other liability, however incurred, by the Owner in connection with or in consequence of or arising out of any breach or default or attempted breach or default by the Owner of any of its obligations. The Guarantors acknowledge that this indemnity is a separate and distinct and principal obligation of each guarantor and will not be construed otherwise.
- 2.2. The Guarantors will pay any money due to the Contractor by reason of the indemnity on demand, including all costs associated with collection of payments such as legal fees and any late fees.
- 2.3. The Guarantors liability under this Guarantee will not be affected by the Owner's insolvency or bankruptcy.
- 2.4. This Guarantee may be enforced against the Guarantors without the Contractor first being required to exhaust any remedy it may have against

the Owner or another guarantor in respect of monies owed pursuant to the Agreement.

- 2.5. This Guarantee is in addition to, and independent of, and will not affect, or be affected by, any other or further security or guarantee held, or taken by, the Contractor now, or after the commencement date of the Agreement (**Commencement Date**), or by any loss or release by the Contractor of any other collateral or other security or guarantee, or by the Contractor failing or neglecting to recover by the realisation of any collateral or other security or otherwise any of the money hereby guaranteed or by any mistake on the Contractor's part.
- 2.6. Until the Contractor has received in full all money now or after the Commence Date owing or payable to the Contractor by the Owner, the Guarantors are not entitled on any ground to claim the benefit of any security held by the Contractor for the payment of the money or obligations guaranteed, or either directly or indirectly to claim or receive the benefit of any dividend or payment in the winding up or bankruptcy of the Owner.
- 2.7. If the Owner is bankrupt or is wound up, the Guarantors are not entitled to prove or claim in the bankruptcy or winding up in competition with the Contractor so as to diminish any dividend or payment which but for such proof the Contractor would be entitled to receive in such bankruptcy or winding up, and the receipt of any dividend or other payment which the Contractor may receive in such bankruptcy or winding up will not prejudice or affect the Contractor's right to recover from the Guarantors the money hereby guaranteed.
- 2.8. The Guarantors agree and declare that all or any sums of money which may not be recoverable from the Guarantors pursuant to the guarantee whether by reason of any legal limitation, disability or incapacity on or of the Owner or any other fact or circumstance and whether known to the Contractor or not will nevertheless be recoverable from the Guarantors as sole or principal debtor in respect thereof and will be paid by the Guarantors on demand.

3. Security Interest

- 3.1. As security for each Guarantor's obligations under this Guarantee, each Guarantor grants the Contractor a Security Interest over all PPSA Property.
- 3.2. For the purposes of section 20(2)(b)(ii) of the PPSA, each Guarantor acknowledges that the Security Interest over all PPSA Property is taken in all of the Guarantors present and after acquired property.
- 3.3. For the purposes of section 19(2) of the PPSA, each Guarantor:
 - (a) warrants that the Guarantor's rights in the Personal Property, or the power to transfer

rights in the Personal Property, to the Contractor; and

- (b) acknowledges that the Contractor has given value for its security interest in the Personal Property, including by its providing or continuing to make available any financial accommodation to the Owner.
- 3.4. The Guarantors agree to execute all documents and do all acts, and things which the Contractor requires to more effectively secure its rights pursuant to the security interest created under this Guarantee.
- 3.5. The Guarantors agree that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to this Guarantee and the Guarantors waive their rights under section 157 of the PPSA to receive a notice under that section.
- 3.6. As further security for payment to the Contractor of all monies payable by the Owner, each Guarantor grants to the Contractor the right to place a caveat in favour of the Contractor over any and all of each Guarantor's interest in freehold and leasehold property both current and later acquired.

4. General Provisions

- 4.1. This guarantee shall bind each of the signatories notwithstanding that all of the listed signatories have not signed.
- 4.2. The Guarantors have obtained independent legal advice regarding the obligations imposed upon the Guarantor under this Guarantee.
- 4.3. The Guarantors freely and with full knowledge of the obligations imposed upon them agree to provide this personal guarantee.
- 4.4. The law applicable to this Guarantee is the law of the State of Queensland and the Guarantors submit themselves to the jurisdiction of the Courts of Queensland and any competent appellate courts.
- 4.5. The Guarantors are deemed to unconditionally sign, seal and deliver this Guarantee as a deed, with the intention of being immediately legally bound by its terms.
- 4.6. Agreement means the agreement dated on or about the date of this Guarantee between the Contractor and the Owner with respect to the construction of a residential building and to which this Guarantee is annexed.
- 4.7. References to the singular form of a word include the plural form and vice versa.
- 4.8. A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
- ... Terms not defined in this Guarantee have the same meaning as defined in the Agreement.

Executed as a deed on _____ / _____ / _____

Signed sealed and delivered by _____)
_____ in the presence of:)
_____)

.....
Witness

.....
Name (please print)

.....
Name (please print)

Signed sealed and delivered by _____)
_____ in the presence of:)
_____)

.....
Witness

.....
Name (please print)

.....
Name (please print)

Executed by _____ **ACN**)
_____ in accordance with)
section 127 of the Corporations Act 2001)

Director

Director/Secretary

Name (please print)

Name (please print)